

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVEN T. MILLER,

Petitioner,

v.

GARY FLEMING,

Respondent.

Case No. C05-5661FDB

ORDER

The petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. This case has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates' Rules MJR 3 and MJR 4.

The petitioner filed this petition and on the same day moved to stay the action as he is currently in state court litigating issues related to his conviction in a personal restraint petition. (Dkt. # 5 and 6). The court entered a show cause order and explained:

The United States Supreme Court has recently addressed the stay and abeyance of habeas corpus petitions. Rhines v. Weber, ___ U.S. ___, 125 S. Ct. 1528. A district Court has discretion to stay a petition, but the courts discretion has had limits placed on it by the passage of the Antiterrorism and Effective Death Penalty Act, AEDPA. The stay and abeyance process should only be used when there is good cause for not exhausting the issue prior to filing the petition.

Petitioner was directed to show cause why the petition should be stayed on or before

1 February 17th, 2006. Petitioner has not responded to the court's order. The motion to stay is
2 **DENIED.** By separate Report and Recommendation the court will recommend this petition be
3 dismissed without prejudice as the issues raised are unexhausted by petitioners admission.

4 The Court Clerk is directed to send a copy of this Order to petitioner.

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6 DATED this 13th day of March, 2006.

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8 /S/ J. Kelley Arnold
9 J. Kelley Arnold
10 United States Magistrate Judge
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